

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

AS.No. 458 of 1998()

OS.106/1995 of SUB COURT, KASARAGOD
.....

APPELLANT: 3RD DEFENDANT:

GOPINATHA BHAT,
GADDAMUT, KOIPADY,
KASARGOD.

BY ADV. SRI.K.I.MAYANKUTTY MATHER
SMT.K.P.RENJINI

RESPONDENTS: PLAINTIFF AND DEFENDANTS 1,2,4 AND 5

1. JAYANTHA BHAT, REP. BY POWER HOLDER
RAMANI.J.BHAT, D'sa GARDEN,
MANNAGUDDA MAIN ROAD,
MANGALORE – 575 003.

2. SMT.JAYA BHAT,
R 8/5, JAYA SREE DHARE CO-OPERATIVE SOCIETY,
BANGUR NAGAR, GOREGOON WEST, BOMBAY – 90.

3. VASANTHA BHAT,
R 8/5, JAYA SREE DHARE CO-OPERATIVE SOCIETY
BANGUR NAGAR, GOREGOON WEST, BOMBAY – 90.

* 4. DAYANANDHA BHAT, S/O.SANTHAPPA BHAT
GADDAMUT, KOIPADY, KUMBLA, KASARGOD. (DIED)

(IT IS RECORDED THAT R5 IS THE LEGAL REPRESENTATIVE
OF DECEASED R4, VIDE ORDER DATED 21.6.2007 IN MEMO
DATED 28.9.2000 WITH C.F.NO.10340/2000)

5. K.PANDURANGA BHAT, S/O. KAMALAKSHA BHAT,
GADDAMUT, KOIPADY, KUMBLA, KASARGOD.

BY ADV. SRI.S.R.DAYANANDA PRABHU
SRI.K.G.GOURI SANKAR RAI

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 03/12/2007,
ALONG WITH AS NO. 527 OF 1998, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

K.PADMANABHAN NAIR, J.

A.S.Nos. 458 & 527 of 1998

Dated this the 3rd December, 2007.

J U D G M E N T

These two appeals arise from the decree and judgment passed in O.S.No.106/1996, on the file of the Sub Court, Kasargod. A.S.No.458/1998 is filed by the 3rd defendant in the suit, and A.S.No.527/1998 is filed by defendants 4 and 5.

2. Respondents 1 to 3 filed the suit with the following averments. Plaintiff A schedule properties were in the possession and enjoyment of Vamana Bhat, M.Suganda Bai, M.Manorama Bai and M.Ramakrishna Bhatt, as absolute owners. They sold the property to Late Anantha Bhat, the father of the plaintiff and 2nd defendant and the husband of the first defendant, as per the Sale Deed No.1103 of 1970. As per the sale deed, Anantha Bhat, the vendee was put in possession of the plaintiff A schedule properties even before the execution of the sale deed, and he was in possession of the same, till his death. After death of Anantha Bhat, plaintiff and defendants 1 and 2 effected improvements. 4th defendant put up a shed unauthorisedly in Item No.2 of plaintiff A schedule in the southern most portion in the year

1990. The same is to be demolished and removed by the 4th defendant. Defendants 3 to 5 have absolutely no manner of right or possession over the suit properties. They brought into existence some fraudulent documents in respect of the suit properties, to which plaintiff and defendants 1 and 2 were not parties. Defendants 3 to 5 did not get any right, title, interest or possession, on the strength of those documents, which are void and frivolous. Defendants 3 and 4 are the relatives of the plaintiff and defendants 1 and 2. Whereabouts of the second defendant was not known. It was also averred that the plaintiff and defendants 1 and 2 are Hindus governed by the provisions of Hindu Succession Act, 1956, and each of them are entitled to one-third share in the properties. Hence, the suit for recovery and for partition.

3. The 3rd defendant filed a written statement contending that all averments in the plaint are false. It was contended that the plaintiff and defendants 1 and 2 are not cultivators. The averment that the properties belong to Vamana Bhat, M.Suganda Bai, M.Manorama Bai and M.Ramakrishna Bhatt, and they were in possession and sold the same to Anantha Bhat was denied. Anantha Bhat was not in possession of the suit property at any time. The

averments that defendants 3 to 5 have no manner or right over the suit properties were also denied. Further averment was that they brought into existence certain fraudulent documents were also denied. 3rd defendant contended that he was a cultivating tenant in Item No.1 of plaint A schedule property, and was entitled to get benefit of Act 1 of 1964 as amended. It was contended that there was already a suo motu proceedings pending disposal as S.M.28/1995 in respect of plaint A schedule property. It was contended that suit was filed as a counter blast to S.M.28/1995. The averment that whereabouts of second defendant was not known and the plaintiff and defendants 1 and 2 were entitled to get one-third share each were denied. It was contended that no properties were available for partition. It was contended that he was a cultivating tenant in respect of 1 Acre and 14 cents of property comprised in re-survey No.125/5 part of Koipady Village. Originally, the properties belonged to one Vittala Sharma. His brother's son was managing the properties. The 3rd defendant obtained the property on chalageni lease in or about Yugadi 1958 from Vittala Sharm, with the consent of Vasudeva Bhat, agreeing to pay an annual rent of Rs.100/= payable on Yugadi every year, and has also paid rent to the landlord Vittala Sharma through Vasudeva Bhat.

Vittala Sharma died issueless in 1960, and Padmavathi alias Radha Bai, Sister of Vittala Sharma succeeded the estate of Vittala Sharma. She became the owner by virtue of order passed in O.S.No.55/65. Vasudeva Bhat was collecting rent from the 3rd defendant till 1970, the date on which Land Reforms Act came into force. After that, landlord's right in respect of 1.14 Acres of land vested with the Government and the property continued to be in the possession of the 3rd respondent as a cultivating tenant. It was contended that Anantha Bhat, paternal uncle of the defendant, purchased the landlord's right in respect of the properties belonging to the aforesaid Padmavathi alias Radha Bai from the latter's children, and hence, the vendee therein did not get possession of the property. At the most, the vendee was entitled to draw the purchase price due to the landlord as he continued in possession of the property as a cultivating tenant. Plaintiff and defendants 1 and 2 were parties to S.M.28/1995 and the suit was liable to be referred to the Land Tribunal to get a finding on tenancy issue in S.M.28/1995. Neither Anantha Bhat nor his heirs got possession of the 1st item of plaint A schedule properties. It was also contended that 3rd defendant was in possession of the property for more than 37 years peacefully, and openly as of right, exclusively

and continuously to the knowledge of deceased Anantha Bhat and his children, viz., plaintiff and defendants 1 and 2, with hostile attitude towards them, and the 3rd defendant has perfected title by adverse possession and limitation.

4. Defendants 4 and 5 filed a joint written statement. They also denied the averment that suit properties were in possession and enjoyment of Vamana Bhat, Sugandhi Bai, Manorama Bai and M.Ramakrishna Bhat as absolute owners. The averment that plaintiff A schedule properties were purchased by Anantha Bhat on 13.8.1970 was also denied. Anantha Bhat did not get possession of the properties at any point of time. Plaintiff and defendants 1 and 2 also did not any possession of the properties. Item No.2 in plaintiff A schedule belong to one Vittala Sharma. He was in possession of the same. During 1960, Item No.2 in the suit property was obtained by the 4th defendant on Chalagine lease from Vittala Sharma. From the date of chalagini lease, the Item No.2 of plaintiff A schedule has been in the actual possession and enjoyment of the 4th defendant. He sold 50 cents of land from the Item No.2 of plaintiff A schedule to the 5th defendant. The remaining portion of properties was with the 4th respondent. The sale deed alleged to have been obtained by Anantha

Bhat on 13.8.1970 could only be a sham and nominal document, and no possession could have passed under the same to the alleged vendee. The right, title and interest of the landlord had vested in the Government on 1.1.1970, and thereafter there was nothing left to be conveyed. The averment that Anantha Bhat and after his death, plaintiff and defendants 1 and 2 effected improvements in the item No.2 of Plaint A schedule was denied. It was the lessee who effected substantial improvements by planting trees. 4th defendant installed a pump set in the Item No.2 after constructing a pump shed. He had constructed a over head tank also. Pump set is an electrically operated one for which the 4th defendant was paying electricity charges. The averment that he put up the structure unauthorisedly was denied. The 4th defendant purchased the pump set after obtaining loan from Syndicate Bank. The Item No.2 were included in the sale deed, dated 13.8.70, with a malicious intention. The valuation of the suit properties made was not correct. Since the plaintiff and defendants 1 and 2 are not in possession of the property, the suit ought to have been valued under Section 37(2) of the Court Fees Act. 4th defendant was a cultivating tenant in respect of Item No.2. S.M.No.128 of 83 was initiated by the Land Tribunal, Kasargod, for

assigning landlord's right in respect of Item No.2 to 4th defendant. That original application was allowed and the 4th defendant obtained the certificate of purchase in that proceedings. 4th respondent was also paying tax. The averment that the defendants 3 to 5 brought into existence fraudulent documents were denied. 4th defendant is a distant relative of the plaintiff. It was contended that plaintiff and defendants 1 and 2 were not residents of Kerala and they were residing else where. Neither the plaintiff nor his predecessor-in-interest were in possession of the property since 1960, date on which the properties were obtained on oral lease by the 4th defendant. The rent was regularly paid to Vittala Sharma and subsequently to Vamana Bhat, but no rent receipts were issued by either of them. So, he also prayed for dismissal of the suit.

5. On account of the contention raised by the defendants that the suit was not properly valued, that issue was considered and an order was passed by the trial court and the plaint was amended. Thereafter, defendants 4 and 5 filed an additional written statement raising a contention that the suit was barred by adverse possession and limitation. On the side of the plaintiff, Exts.A1 to A9 were proved and marked. No oral evidence was

adduced. Appellants produced Exts.B1 to B16. Dws. 1 and 2 were also examined. The Trial court found that the defendants 3 to 5 had no right over the suit properties. The court directed defendants 3 to 5 to surrender possession of plaint A schedule properties, and also passed a preliminary decree for partition. Plaintiff was allotted one-third share and defendants 1 and 2 were also allotted one-third share each, on condition that they shall pay the requisite court fee. Challenging that preliminary decree these two appeals are filed.

6. The learned counsel appearing for the appellant in A.S.NO.458/1998 has argued that plaintiff and defendants 1 and 2 miserably failed to prove the title claimed to the properties. It was contended that there is no factual or legal basis for the finding that Anantha Bhat obtained the properties in pursuance of Ext.A1. It was also contended that Ext.A4 sale deed relied on by the plaintiff was a sham and nominal document brought into existence with the sole intention of defeating the right of the appellant as a cultivating tenant. It was also contended that the court below erred in not referring the question of tenancy to the Land Tribunal having jurisdiction over the area. It was argued that the court below should have at least waited for a decision in S.M.No.28/1995.

7. The appellant in A.S.No.527/1998 has argued that the court below went wrong in holding that plaintiff and defendants 1 and 2 have got title over the property. It was argued that the court below failed to note that 4th defendant has been in possession of Item No.1 of plaint A schedule property ever since 1960 under lease granted by Vittala Sharma, who was the owner of the property. It was also contended that the court below ought to have found that Ext.A4 is a sham and nominal document created for defeating the right of defendants 1 and 2. It was contended that the court below ought to have referred the matter to the Land Tribunal, when it found that the plaintiff and defendants 1 and 2 have got title over the suit property. It was contended that Civil Court has got no jurisdiction to decide the tenancy right claimed by the appellants and court below, without any basis, held that Ext.B1 certificate of purchase is not valid. It was contended that Vamana Bhat, M.Manorama Bai , M.Ramakrishna Bhatt, and M.Suganda Bai, and her son Pundalika Bhat were parties to S.M.No.128/1983, and it was on the basis of joint written statement filed by the parties that the said Ext.B1 purchase certificate was issued in favour of 4th defendant. It was contended that sufficient time was not granted to the defendants 4 and 5 to produce the order passed in

S.M.No.128/198 by the Land Tribunal. It was contended that nowhere in Ext.A4 sale deed, it was stated that vendees were in possession of the property. It is argued that the evidence on record clearly shows that the defendants 4 and 5 were in possession of Item No.2 of plaint A schedule. It is argued that Ext.B3 series will show that from 7.10.1965 onwards, the appellants were paying the basic tax for that property. It was contended that the court below went wrong, in decreeing the suit, without assessing the value of improvements due the respondents-appellants in these proceedings.

8. The main ground raised in both the appeals is that the court below went wrong in not referring the case to the Land Tribunal for a decision, on the question of tenancy, claimed by the appellants in both these appeals. In A.S.No.458/1998, it was contended that the appellant had filed S.M.28/1995 and this suit is filed as a counter blast to that proceedings. It is argued that the Civil Court has no jurisdiction to decide as to whether the appellant tenant is entitled to get fixity of tenure. It is argued that in **Poovollaparambil Chathu and others v. V.P.Sudheer and others** (AIR1999 SC 327), the Apex Court has held that bar of jurisdiction of Civil Court to consider the matters averred by Section 125 is absolute,

and if such a question arises for consideration, the matter has to be referred to the Land Tribunal. Counsel also relied on a decision rendered in **Mathevan Padmanabhan alias Ponnann v. Parameshwaran Thampi and others** (1995 (1) SCC 479) and argued that the Civil Court has no jurisdiction to decide that issue and it is to be referred to the Land Tribunal. It is argued that the main contention of the appellants in both these appeals were that they are cultivating tenants entitled to fixity of tenure and as such, the matter ought to have been referred to the Land Tribunal having jurisdiction over that area. It is argued that this Court may set aside the decree and judgment passed in the suit and remand the case with a specific direction to refer the issue regarding fixity of tenure claimed by the appellants to the Land Tribunal having jurisdiction over the area.

9. Appellant in A.S.No.458/1998 has pointed out that the Land Tribunal has initiated suo motu proceedings as S.M.No.28/1995, and hence, either the Civil Court ought to have awaited for a decision on that issue by the Land Tribunal or it should have referred the matter to be considered along with that proceedings.

10. Initially, the trial court, after raising the issue of fixity of tenure as Additional Issue No.11, referred the matter to the Land Tribunal. Challenging that Order, plaintiff filed C.R.P.No.1088/1996 before this Court. This Court allowed the C.R.P. Setting aside the order passed by the Sub Judge. This Court took note of the fact that defendants 3 to 5 raised a contention that neither the plaintiff nor defendants 1 and 2 have any title over the suit properties, and hence, found that it is a case where prima facie no claim of tenancy is raised under the plaintiff and defendants 1 and 2. This Court set aside the order referring the matter to the Land Tribunal and directed the trial court to try and dispose of the suit, in accordance with law.

11. The Trial Court found that respondents 1 to 3 have got title over the properties, but did not refer the question to the Land Tribunal, but disposed of the suit. According to the appellants, when the trial court found that the plaintiff and defendants 1 and 2 have got title, it ought to have referred the case to the Land Tribunal for considering the issue of tenancy claimed by the appellants in both the appeal. It is argued that the failure to refer the tenancy question vitiates the trial and the decree passed is without jurisdiction.

12. The learned counsel appearing for the respondents, on the other hand, has argued that the appellants never claimed any tenancy either to the plaintiff and defendants 1 and 2 or to their predecessor-in-interest. According to 3rd defendant, though the properties originally belonged to one Vittala Sharma, his brother's son, Vasudeva Bhat was managing the properties, and with the consent of Vasudeva Bhat, 3rd defendant obtained chalagini lease in or about Yugadi 1958, agreeing to pay an annual rent of Rs.100/=. The 3rd defendant contended that he was paying the rent to Vasudeva Bhat. It was contended that the rent was collected by Vasudeva Bhat till 1970, the date on which the right, title and interest of the landlord vested with the Government. It was further contended that Sale deed relied on by the plaintiff was a sham and nominal one, which did not take effect, and the vendee under that document never got possession, and hence, plaintiff also did not get any title or possession.

13. According to the plaintiff, the properties originally belonged to Vittala Sharma. He died issueless and his right devolved upon his sister Padmavathi alias Radha Bai, and on her death, her children inherited the properties, and they sold the property to one Anantha Bhat on 13.8.1970. Third defendant had no case that he paid

any rent at any point of time to the Radha Bai, or to her children, or to Anantha Bhat. His definite case was that he was paying rent to Vasudeva Bhat. So, going by the pleadings, 3rd defendant did not make any claim under the plaintiff or his predecessor-in-interest. During oral evidence also, 3rd defendant deposed that Item No.I in the Plaintiff A schedule property was in the possession of Vasudeva Bhat and from 1958 onwards, he was in possession of the same. He deposed that the lease was in the Yugadi year 1958. He deposed that he was paying rent to Vasudeva Bhat and Vasudeva Bhat died in the year 1970. He further deposed that he was unaware of the sale deed relied on by the plaintiff and to his knowledge, the landlord's right to Item No.1 of plaintiff A schedule devolved upon Vasudeva Bhat. Ext.A8 is the copy of the suo motu application filed. The names of landlords were stated as Bhagavathi, Kamala, Varija and Savithri. They are the legal representatives of deceased Vasudeva Bhat. Ext.A9 is the written statement filed by A party, who is the appellant in A.S.No.458/1998 before the Land Tribunal. In Ext.A9, it was admitted that the properties the originally belonged to late Vittala Sharma, and after his death, the properties devolved upon his sister Padmavathi alias Radha Bai. Her estate was devolved upon her heirs M.Vamana Bhat,

M.Sugandhi Bai, M.Manorama Bai and M.Ramakrishna Bhat. It was further contended that they sold their right to Anantha Bhat in the year 1970. It was contended that Anantha Bhat expired in the year 1977 leaving behind Jaya.A.Bhat, Jayantha A.Bhat and Vasantha.A.Bhat. It was further contended that even during her life time of Anantha Bhat, Vasudeva Bhat was managing the properties, and the names of B party stated in the application were the intermediaries. Subsequently, he filed additional written statement contending that he obtained chalagini lease from Vittala Sharma with the consent of Vasudeva Bhat, who was dealing with the properties. It was contended that rent was payable to Vasudeva Bhat on Yugadi day of every year, and the appellant was paying rent to Vasudeva Bhat till Yugadi 1970. It was admitted that no receipts were ever issued. It was also contended that B party was never been in possession of any portion of the property from 1958. It was also contended that neither Padmavathi alias Radha Bai, nor her children got right or possession of the properties. So, in the suit as well as in the S.M. Proceedings, the definite stand taken by the appellant, 3rd defendant, was that neither Anantha Bhat nor his heirs have got title or possession over Item No.1 of plaint A schedule property. In the S.M.proceedings, he impleaded

heirs of Vasudeva Bhat as land owners. Appellant had admitted that the plaintiff had filed a petition to get himself impleaded in that proceedings. The appellant even denied his signature in Exts.A6 and A7. An agreement was entered into between the appellant and Jayantha Bhat, who was one of the co-owner. So, the mere finding of the trial court that respondents 1 to 3 are the owner of the property alone is not a ground to refer the matter to the Land Tribunal. So long as the appellant does not admit tenancy under them, it is not necessary to refer the matter to the land Tribunal.

14. In the written statement filed by respondents 4 and 5 also, it was contended that respondents 1 to 3 have no right over the property. It was specifically denied that vendors in Ext.A4 sale deed had no right over the property. The contention that properties were sold to Anantha Bhat on 13.4.1970 was also denied. The 5th defendant also contended that Anantha Bhat was not put in possession of the suit properties, and he did not effect any improvements, and hence, neither Anantha Bhat nor his children obtained any right or possession over the properties. It was contended that 4th defendant obtained chalagini lease from Vittala Sharma and he obtained certificate of purchase in S.M.128/1983. So,

the appellant in A.S.No.527/1998 also never admitted the title with respondents 1 and 3 or their predecessor-in-interest. The appellants produced Ext.B1 certificate of purchase issued by the Land Tribunal, Kasargod. That certificate was rejected by the Civil Court on the ground that there is nothing in that document to show that respondents 1 to 3, or their predecessor-in-interest were made parties to that proceedings. Appellants produced copy of the order passed in that original petition along with a petition to receive the same as additional evidence. 5th defendant has filed an affidavit stating that his lawyer instructed him to obtain a copy of the order in S.M. Proceedings, and after searching the records of both the defendants, he got a copy of the Original order. It was contended that the assignors of Ext.A4 sale deed was a party to the S.M. Proceedings and that alone is sufficient to find that he is entitled to fixity of tenure over that properties. A copy of the document produced shows that this copy was obtained as early as on 23.5.1984.

15. In the written statement filed along with Exts.A4 and A5, there is no admission that the assignors of Anantha Bhat were party to the S.M. Proceedings. A perusal of the copy of the document produced shows that the 4th defendant obtained that copy as early as

23.6.1984. The reason stated for non production of the same is very flimsy. The appellant has not offered any valid reason for non production of the same in the court below. A perusal of the order shows that this is a proceedings initiated under Section 72 (mm) of the Land Reforms Act. A joint application in form No.J under Rule 13 (1) was filed. There is absolutely nothing in the order to show that any notice was issued to anybody. The persons who executed the sale deed as early as on 13.8.1970 had signed the joint statement in Form No.J in the year 1983 claiming that they were the owners on the date of signing of that form. Form No.J was filed in the year 1983, more than 13 years, after the execution of Ext.A4 sale deed. It is clear that suppressing the facts that the properties were sold more than a decade ago, a joint statement filed by the 4th defendant and the person who sold away their title was filed and obtained a certificate of purchase. That can be the only reason why the copy of the order passed in the suo motu proceedings was not produced before the trial court. 4th defendant did not enter into the box. 5th defendant was examined as DW.1. Even at the time of oral evidence given on 17.1.1998, a definite stand taken by the 5th defendant was that the executant of Ext.A4, who were the respondents in proceedings before

the Land Tribunal did not obtain any right over item No.2 of plaint A schedule property. DW.1 was born on 1950. Hence, on the date of alleged lease, he must have been only 10 years old. So, he can have no direct knowledge regarding the lease arrangement. For reasons best known to the 4th respondent, he did not give oral evidence. DW.1 had admitted that Vittala Sharma died before 1970 and he does not know who are the legal representatives of Vittala Sharma. He also conceded that he does not know whether Vittala Sharma had a sister by name, Padmavathi alias Radha Bai. He further admitted that he had absolutely no idea on whom the right of Vittala Sharma devolved upon. He deposed that he was not aware of Ext.A1 suit. He deposed that he does not know as to who defendants 1 and 2 in Ext.A3. Defendants 4 and 5 also do not admit any right to the plaintiff or their predecessor-in-interest. They also set up tenancy not under the plaintiffs, respondents 1 to 3 or their predecessor-in-interest. So, finding of the court below that there was no need to refer the matter to the Land Tribunal and the appellants. The further finding of the court below that the certificate of purchase is not binding on the plaintiffs and defendants 1 and 2 is also correct.

16. Now, I shall consider whether there is any material to support the contentions of the appellants regarding their claim for fixity of tenure. I have already discussed the pleadings and evidence adduced by the appellants. The appellant in A.S.No.458/1998 is the A party in S.M.28/1995. Ext.A8 is the copy of the proceedings. In Ext.A8, in answer to column-4, it is specifically averred that Vasudeva Bhat was the landlord and his children were shown as the land owners. But subsequently he filed a statement in which he had admitted that the property originally belonged to Anantha Bhat and after his death, his rights devolved upon Jaya.A.Bhat, Jayantha A.Bhat and Vasantha.A.Bhat. In the written statement, his contention was that respondents in O.A. are intermediaries. Ext.A6 is the additional written statement filed by him. In that, he had raised a new case that oral lease was from Vittala Sharma with the consent of Vasudeva Bhat. It was stated that he was paying Rs.100/= per year to Vasudeva Bhat as rent on Yugadi day. It was also admitted that after the death of Vasudeva Bhat in the year 1970, he had stopped paying rent to anybody. It is also admitted by him in that objection that neither Vittala Sharma nor Vasudeva Byhat issued any receipt. To substantiate the contention that he obtained the lease hold right, the

only evidence available is that of the oral evidence of DW.3. He was aged about 62, when he was examined on 22.1.1998. According to him, the lease was in the year 1958, so he was hardly about 20 years old on the date of alleged lease. He had denied his signature in Ext.A6 additional written statement attested by his own lawyer. Therefore, apart from the interested oral evidence, there is absolutely nothing on record to show that there was any lease arrangement from Vittala Sharma to the appellant in A.S.No.527/1998. So, on merits also, the contention of the 3rd defendant that he is entitled to fixity of tenure is unsustainable.

17. Now, I shall consider how far the 4th defendant has succeeded in establishing the claim of fixity of tenure, regarding the appellants in connected A.S.No.527/1998. The case put forward by the appellant was that there was a lease in favour of 4th defendant. It was contended that they have produced basic tax receipts. The basic tax receipts produced shows that tax was paid in the name of Vittala Sharma by Jayanantha Bhat. Even after the death of Vittala Sharma, land tax was being paid in his name by Jayanantha Bhat. The mere fact that land tax was paid by the 4th defendant in the name of Vittala Sharma is not a ground to hold that there was a lease arrangement.

There also, the only evidence apart from Ext.B1 is the interested testimony of DW.1. Ext.B1 shows that 13 years after selling the property, the vendors filed a joint application. So, that Ext.B1 is of no consequence. Admittedly, there is no rent receipts. So, there is no evidence to substantiate the contentions that 4th defendant is a cultivating tenant entitled to equity of share. So, on merits also, there is material to show that defendants 3 to 5 are entitled to fixity of tenure.

18. Now, I shall consider whether the respondents 1 to 3 had established the title claim by them. Ext.A3 is the copy of plaint filed in O.S.No.55/1965. Ext.A2 is the plan appended to the final decree. Ext.A3 shows that the property originally belonged to Vittala Sharma. During the pendency of suit, he died and his sister Padmavathi alias Radha Bai was impleaded as his legal representatives. She also died. Her children were impleaded as legal representative, and the share due to Vittala Sharma was allotted to them. They sold the property to Anantha Bhat. So, the evidence on record clearly shows that the alienors in Ext.A4 were the owners of property and they sold the same to Anantha Bhat. Anantha Bhat died and his rights devolved upon his widow, plaintiff and defendants 1 and

2. So, the finding of the trial court that the plaintiff and defendants 1 and 2 are the owners of the property and each of them are entitled to one-third share in the suit property is correct and does not call for any interference.

19. Now I shall consider how far the appellants have established their contention of adverse possession and limitation. Third defendant had raised a specific contention that he is in possession of the property and enjoyment of the same in the denial of the right of the plaintiff, and hence he had perfected his title by adverse possession and limitation. It is admitted by both appellants that Vittala Sharma was the original owner. Their case was that one Vasudeva Bhat for and on behalf of Vittala Sharma leased out the properties to them, and was collecting the rent. When a person admits that he is lessee, he has to admit that the property belong to another person. A person cannot claim tenancy against himself. So, the claim of adverse possession and fixity of tenure cannot co-exist. So, even accepting the case of the appellants that they are in possession, that possession is only permissive one which will not become adverse to the real owner. Appellants have not perfected the title by adverse possession and limitation also. So, the finding of the court below that

respondents 1 to 3 are the owners of the property and they are entitled to get a preliminary decree for partition of one-third right is correct and does not call for any interference. There is no merit in these appeals, and they are only to be dismissed.

In the result, the appeals are dismissed.

**K.PADMANABHAN NAIR,
JUDGE**

nj.

K.PADMANABHAN NAIR, J.

A.S.Nos.458 & 527 of 1998

J U D G M E N T

Dated:3rd December, 2007.
